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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-194566

DATE: August 16, 1979

MATTER OF: Blossam Contractors, Inc.

DLG 02599

DIGEST:

1. Protest filed more than ten days after receipt of initial adverse agency action and sent by certified mail less than five days before final date for filing is untimely and not for consideration on the merits
2. Unsuccessful bidder may not, after award, have its bid corrected on basis of overlooked lower subcontractor's estimate, and thereby displace awardee.

Blossam Contractors, Inc. (Blossam) protests the decision by the Department of the Army to permit correction before award of an erroneous bid submitted by W & J Construction Corporation (W & J) under invitation for bids (IFB) No. DACA01-79-B-0009. Blossam also protests the Army's decision not to permit correction by Blossam, after award, of its allegedly erroneous bid under the same IFB.

The IFB was issued the U.S. Army Corps of Engineers, for the alteration of bachelor enlisted quarters at Patrick Air Force Base. At bid opening on December 19, 1978, W & J was found to have submitted the low bid of \$2,846,000. Blossam was second low at \$2,948,135. After bid opening, on this same date, W & J advised the Contracting Officer of an alleged mistake in bid and subsequently requested correction pursuant to Defense Acquisition Regulation (DAR) 2-406.3(a)(2) (1976 ed.).

By letter dated February 15, 1979, Blossam advised the Army that if W & J was awarded the contract at a price in excess of its \$2,846,000 original bid, Blossam was serving notice of its protest of the award. Pursuant to his authority under DAR 2-406.3(b)(1), the General Counsel of the Office of the Chief of

DLG 02600

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AGC 00967

[PERMISSION To correct ERRONEOUS Bid]

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Engineers determined that W & J had established by clear and convincing evidence that it was entitled to correct its bid upward by \$81,798 (for a total bid of \$2,927,798). This correction was based on a determination that W & J mistakenly omitted an amount from its bid representing a subcontractor's quote for certain cabinets and counters.

Blosam received actual notice of the Army's decision to permit correction of the W & J bid on March 26, 1979. On the same date, Blosam also received actual notice that its protest of February 15, 1979, was denied. Blosam's receipt of notice is evidenced by its March 26 letter to the Army stating that, in view of the fact that W & J had been permitted to correct its bid mistake, Blosam now wished to be permitted to correct a similar bid mistake which it asserted amounted to \$75,727.90. That letter goes on to state that if Blosam's correction is permitted, it would become the low bidder at \$2,872,407.10, and therefore requested that it be awarded the contract.

An information copy of this letter was received in GAO on March 29, 1979. Since the letter was addressed to the Army, and did not specifically indicate that a protest was being filed, we advised Blosam that in order for our Office to consider the matter as a protest, we would require a timely filed specific request for a ruling by the Comptroller General. See Security Assistance Forces and Equipment OHG, B-193364, March 27, 1979, 79-1 CPD 203. On April 10, 1979, our Office received a letter from Blosam sent by certified mail on April 5, 1979, protesting the award to W & J.

Since this protest was filed more than ten working days after Blosam's receipt of initial adverse agency action (actual notice that its protest had been denied by the Army), the protest of the award to W & J at the corrected bid price is untimely under our Bid Protest Procedures, 4 CFR § 20.2(a)(1978), and not for consideration on the merits. Eglen Hovercraft Incorporated, B-193050, January 22, 1979, 79-1 CPD 39.

However, § 20.2(b)(3) of our Procedures provides for consideration of protests which are untimely filed if they are sent by registered or certified mail "not later than the fifth day * * * prior to the final date for filing a protest as specified herein."

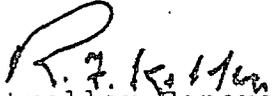
Blosam's protest was sent by certified mail on April 5, 1979, less than 5 days prior to the deadline for receipt in our Office. Since the protest was not sent within the time limit provided for mailing protests by certified mail, our Office will not consider the protest under the certified mail exception. Columbus Services, Inc., B-194704, May 17, 1979, 79-1 CPD 362.

Blosam's other contention, (that it should be permitted to correct its own mistake in bid, is founded on the assumption it stands on the identical footing as W & J, and should be afforded the same opportunity to correct. However, there are material differences between W & J's posture with respect to its mistake, and that of Blosam. (W & J's allegation of mistake was made after opening, but before award, and the requested correction did not result in the displacement of any other bidders. Under these circumstances, it was properly considered by the Army to warrant correction) under DAR 2-406.3(a)(2). (On the other hand, Blosam's asserted error in bid was not alleged until after award was made to W & J.) Therefore, it may not be considered for correction under DAR 2-406 which permits correction of mistakes before award. After award, this section deals only with correction of mistakes in the awardee's bid. DAR 2-406.4. Thus an attempt such as Blosam's to obtain (correction of an unsuccessful bid after award, in order to displace the awardee) is not sanctioned by the DAR provisions concerning mistakes in bid.

However, even if Blosam's allegation of mistake had been made prior to award, Blosam would have been required to establish both the existence of the mistake and the actually intended bid substantially from the invitation and the bid itself, because correction would have displaced the low bidder. DAR

2-406.3(a)(3). Blossam's alleged mistake of failure to include a lower bid from one of its painting sub-contractors, which it alleges it had overlooked during the last minute rush of bid preparations, could not have been so established.

Accordingly, the protest is dismissed in part and denied in part.


Deputy Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-194566

August 16, 1979

The Honorable Charles E. Bennett
House of Representatives

Dear Mr. Bennett:

We refer to your letter to our Office dated April 10, 1979, in regard to the protest of Blosam Contractors, Incorporated concerning the award of a contract under solicitation No. DACA01-79-B-0009 issued by the Department of the Army.

By decision of today, copy enclosed, we have denied the protest in part, and dismissed the protest in part.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "R. F. Kottler".

Deputy Comptroller General
of the United States

Enclosure